Supreme Court, U.S.
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No. 00-1708

IN THE

Supreme Court of the United States

L.B. FOSTER COMPANY,

Petitioner,

v.

DAWSON CONSTRUCTION PLANT LIMITED,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION

THEODORE D. ADEN
Counsel of Record
LOUIS SMITH
LEBOEUF, LAMB, GREENE
& MACRAE, L.L.P.
Attorneys for Respondent
One Riverfront Plaza
Newark, New Jersey 07102
(973) 643-8000

167556

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

PARTIES TO THE PROCEEDING AND STATEMENT PURSUANT TO RULE 29.6

Jerry and Karen Landers were plaintiffs in the proceedings below. Their Complaint against Dawson Construction Plant Limited was dismissed by the District Court based on the lack of personal jurisdiction. Petition, App. at 5a. The Landers abandoned their appeal before the Fifth Circuit, and as a result that appeal was dismissed. Accordingly, the Petition does not raise any issue with respect to the Landers.

Dawson Construction Plant Limited has no parent corporation and there is no publicly held company owning ten percent (10%) or more of Dawson's stock.

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REASONS FOR DENYING THE WRIT

Petitioner's claims against Dawson Construction Plant Limited ("Dawson") were dismissed by the District Court in an unpublished memorandum opinion. Applying well-settled principles, the District Court ruled that Dawson lacked the requisite minimum contacts with Texas, and in any event, traditional notions of fair play and substantial justice would be offended by exercising jurisdiction over Dawson. In an unpublished, one-paragraph, *per curiam* opinion, the Fifth Circuit affirmed "for essentially the same reasons set forth in [the District Court's] well-reasoned opinion." Petition, App. at 2a.

As both the District Court and Fifth Circuit opinions below were unpublished, no controlling precedent has been set in this case. Moreover, this case does not raise any novel legal issues, but instead was correctly resolved in accordance with universally accepted legal principles relating to personal jurisdiction. Even the Petitioner concedes that it seeks to have this Court alter a "general rule" from which no court has deviated. Petition at 13.

Petitioner's argument demonstrates a fundamental lack of understanding of the personal-jurisdiction principles established by this Court. Petitioner improperly relies on a stream-of-commerce theory in seeking to invoke specific jurisdiction. To invoke such jurisdiction, Petitioner relies on the "ongoing relationship between Foster and Dawson that continued for sixteen years, which consisted of selling and shipping millions of dollars worth of equipment by Dawson to Foster in Houston, Texas, including the defective shackle in question." Petition at 10. While Petitioner argues that this argument raises an "Unresolved Constitutional

Issue," Petition at 4, under the analytical framework created by this Court, contacts over a period of time such as those raised by Petitioner are relevant to general, not specific, jurisdiction. Petitioner thus incorrectly attempts to shoe-horn general-jurisdiction facts into a specific-jurisdiction doctrine.

Moreover, Petitioner did not raise general jurisdiction either before the Fifth Circuit or in its Petition, and thus it is not before this Court.

Finally, the District Court properly concluded that the exercise of jurisdiction over Dawson would offend traditional notions of fair play and substantial justice. As the Landers' appeal was dismissed, this matter now involves only an indemnification claim by a Delaware company principally located in Pennsylvania against an English company located in England arising from an accident that occurred in West Virginia. No Texas interest is present in this case. Thus, the District Court's conclusion is fully supported by the controlling precedents of this Court.

I.

THIS CASE DOES NOT RAISE ANY "UNRESOLVED CONSTITUTIONAL ISSUE"

Contrary to the assertions in the Petition, this case was decided below in accordance with well-settled principles relating to personal jurisdiction. The "constitutional touchstone" of the determination of whether the exercise of personal jurisdiction comports with due process "remains whether the defendant purposefully established 'minimum contacts' in the forum State." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985). Thus, "it is essential

in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *Hanson v. Denckla*, 357 U.S. 235, 253 (1958).

Under minimum-contacts analysis, "the defendant's conduct and connection with the forum State [must be] such that he should reasonably anticipate being haled into court there." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980). The "purposeful availment" requirement protects defendants from being "haled into court in a jurisdiction solely on the basis of random, fortuitous, or attenuated contacts, or of the unilateral activity of another party or a third person." *Burger King Corp.*, 471 U.S. at 475 (internal quotations and citation omitted).

A. Specific vs. General Jurisdiction

The exercise of jurisdiction over a nonresident defendant "in a suit arising out of or related to the defendant's contacts with the forum" implicates the doctrine of "specific jurisdiction." *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 n.9 (1984). In the specific-jurisdiction context, the minimum contacts inquiry must focus on "the relationship among the defendant, the forum, and the litigation." *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977).

However, "in a suit not arising out of or related to the defendant's contacts with the forum," the doctrine of "general jurisdiction" is at issue. *Helicopteros*, 466 U.S. at 414 n.9. General jurisdiction arises where the defendant's contacts with the forum state are "continuous and systematic." *Id.*, 466 U.S. at 416.

The District Court properly found that Dawson lacks the requisite minimum contacts to assert either specific or general jurisdiction.

B. Applying Well-Settled Principles, the Courts Below Properly Concluded that Specific Jurisdiction Over Dawson was Lacking

The District Court properly ruled that it did not have specific jurisdiction over Dawson because the claims at issue did not arise out of or relate to Dawson's contacts with Texas. Jerry and Karen Landers, West Virginia residents, had asserted claims against Dawson arising from an accident that occurred in West Virginia. Petitioner, a Delaware corporation principally located in Pennsylvania, asserted an indemnification claim against Dawson arising from the same accident. These claims have no connection to Texas. Specifically, the District Court reasoned as follows:

> Houston is a large point of entry for goods in the United States. It is certainly reasonable for a manufacturer like Dawson to foresee that its goods would be stored for some time in a warehouse in Houston, awaiting distribution in other markets. It stretches credulity, however, to suggest that wherever those products end up, any harm they might cause *arises out of* their contacts with the port where they touched American soil. Furthermore, by importing goods through a particular port a manufacturer does not direct its activities at the residents of that forum. This action has nothing to do with the State of Texas. It is an action by West Virginia plaintiffs against a British defendant arising out of an accident that occurred

> in West Virginia allegedly caused by a product manufactured in Britain and sold from Pennsylvania into Ohio. The Landers' cause of action does not arise out of or relate to the Texas contacts on which plaintiffs rely to establish jurisdiction. *See Felch v. Transportes Lar-Mex SA*, 92 F.3d 320 (5th Cir. 1996) *citing Arkwright Mut. Ins. Co. v. Transportes de Nuevo Laredo, S.A.*, 879 F. Supp. 699, 700 (S.D. Tex. 1994). Accordingly, this court does not have specific personal jurisdiction over Dawson.

Petition, App. at 10a-11a.

While Petitioner argued to the Fifth Circuit that the District Court erred by not adequately addressing Petitioner's indemnification claim, that contention was correctly rejected. Petitioner is a Delaware company having its principal place of business in Pittsburgh, Pennsylvania, not a Texas company. Petitioner's indemnification claim arises from the same underlying facts as set forth in Plaintiffs' complaint; namely, the accident that occurred in West Virginia on April 22, 1996. Petitioner allegedly has standing to pursue its indemnification claim because it settled the suit the Landers brought against it in West Virginia. Because the same underlying facts are involved, the minimum-contacts inquiry is the same for the claims asserted by the Landers and Petitioner. The District Court's analysis set forth above applies equally to Petitioner's indemnification claim. For the reasons expressed by the District Court above, Foster's indemnification claim "has nothing to do with the State of Texas."

C. Petitioner's Effort to Invoke the Stream-of-Commerce Doctrine is Misguided

The thrust of Petitioner's contention before this Court is that because Dawson products were shipped through Texas, so-called "stream of commerce" analysis creates specific personal jurisdiction over Dawson. That analysis is inapplicable here because any injury in this action occurred in West Virginia, not the forum state of Texas. Here, the Landers were allegedly injured in West Virginia, and Petitioner paid the Landers $800,000 to settle the earlier action the Landers had filed against Petitioner in West Virginia. No injury occurred in Texas.

Without exception, the case law concludes that the "stream of commerce theory relates to specific rather than general jurisdiction, *and applies only when the injury occurs in the forum state*." *Kern v. Jeppesen Sanderson, Inc.*, 867 F. Supp. 525, 536 (S.D. Tex. 1994) (emphasis added) (citing, among other cases, *Bearry v. Beech Aircraft Corp.*, 818 F.2d 370, 375 (5th Cir. 1987) (reasoning that "a stream of commerce ensures that the contact that caused the harm in the forum occurred there through the defendant's conduct and not the plaintiff's unilateral activities")); *see also Walker v. Newgent*, 583 F.2d 163, 167 (5th Cir. 1978) (reasoning that cases in which exercise of jurisdiction was based on "stream of commerce" have "involved an injury that occurred in the forum state"), *cert. denied*, 441 U.S. 906 (1979).

Indeed, in its Petition, Petitioner concedes the case law follows "a general rule that the complained of injury must occur in the forum State under the stream-of-commerce doctrine." Petition at 13. There is no split of authority on this point. Moreover, there is no reason for this Court to depart from this well-settled rule.

Petitioner argues that the "ongoing relationship between Foster and Dawson that continued for sixteen years" gives rise to specific jurisdiction under the stream-of-commerce theory. Petition at 9. Petitioner relies on the "purposeful shipment of millions of dollars of equipment" by Dawson. *Id.* at 4. Petitioner argues that "Foster's receipt of the defective shackle in question is but one of literally hundreds of shipments of equipment it received from Dawson in Houston, Texas, over the span of sixteen years. Foster's receipt of the defective shackle was not an isolated occurrence." *Id.* at 12.

The factors relied on by Petitioner raise an argument that is "more akin to a general jurisdiction argument than to a specific jurisdiction argument." *Alpine View Co. v. Atlas Copco AB*, 205 F.3d 208, 216 (5th Cir. 2000). Factors such as the length of the relationship between Petitioner and Dawson and the volume of products shipped by Dawson into Texas over the years do not arise out of or relate to the suit before the Court. Thus, under the framework devised by this Court, Petitioner must demonstrate that Dawson's contacts with Texas were "continuous and systematic" such that general jurisdiction may be invoked. *Helicopteros*, 466 U.S. at 416.

Petitioner's argument is nothing more than an attempt to make an end run around the heightened requirements to invoke general jurisdiction. Because Petitioner cannot demonstrate the required "continuous and systematic" contacts to invoke general jurisdiction, it asks the Court to consider general-jurisdiction contacts in the specific jurisdiction, stream-of-commerce doctrine. There is no reason for the Court to alter the existing framework.

Finally, Petitioner states that there has been a split among the Courts of Appeals regarding the application of the stream-of-commerce doctrine in the wake of *Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102 (1987). The four justice plurality opinion in *Asahi* narrowed the stream-of-commerce doctrine by requiring "an action of the defendant purposefully directed toward the forum state," and concluded that the "placement of a product into the stream of commerce, without more, is not an act of the defendant purposefully directed toward the forum state." *Asahi*, 480 U.S. at 112.

While some Courts of Appeals have continued to follow the pre-*Asahi* case law, and not the plurality *Asahi* opinion, this issue is not raised in this case. All courts agree that the stream-of-commerce doctrine is only implicated where the injury occurs in the forum state. Here, the injury occurred in West Virginia, not the forum state of Texas. Moreover, this case now only concerns an indemnification claim asserted by a distributor against a manufacturer, neither of which is a resident of the forum state.

In sum, the stream-of-commerce doctrine has no place in this case.

D. Petitioner Has Not Challenged the District Court's Holding that it Lacked General Jurisdiction

The issue of general jurisdiction is not before this Court. In its brief to the Fifth Circuit, Petitioner stated as follows: "Foster submits that **its claim** against Dawson forms the basis for this Court to assert specific, rather than general, jurisdiction over Dawson." Foster's Fifth Circuit Brief at 28. Moreover, Petitioner has not raised a general-jurisdiction argument in its Petition.

In any event, the District Court properly concluded that the record did not reflect the required "continuous and systematic" contacts with Texas to invoke general jurisdiction. Petition, App. at 11a-13a. There is absolutely no reason for this Court to disturb or even address that analysis.

II.

THE PRACTICAL QUESTION PRESENTED DOES NOT FAVOR GRANTING THE PETITION

Petitioner urges this Court to consider its Petition within the "pattern of international commerce." Petition at 8. Petitioner argues that that pattern supports loosening the standards to find personal jurisdiction over a foreign defendant. This case does not support Petitioner's argument.

This case involves an indemnification claim asserted by a United States distributor against a manufacturer located in England. These two commercial entities were free to negotiate and agree to whatever terms they wished regarding submission to the courts of the United States. Because Petitioner failed to obtain such a concession from Dawson regarding submission to the jurisdiction of the courts of the United States, Petitioner now asks this Court to alter the well-settled legal framework. This Court should clearly reject that invitation.

III.

THE COURTS BELOW PROPERLY CONCLUDED THAT THE EXERCISE OF JURISDICTION OVER DAWSON WOULD VIOLATE TRADITIONAL NOTIONS OF FAIR PLAY AND SUBSTANTIAL JUSTICE

Petitioner does not seek to alter the legal principles governing the fair-play-and-substantial-justice prong of personal-jurisdiction analysis, but instead argues that the lower courts incorrectly applied the facts at bar to the those principles. As a result, there is no reason for this Court to address this issue.

In any event, the conclusion reached by the lower courts that the exercise personal jurisdiction over Dawson would offend "traditional notions of fair play and substantial justice" was correct. *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). In performing this evaluation, this Court has stressed that the "unique burdens placed upon one who must defend oneself in a foreign legal system should have significant weight in assessing the reasonableness of stretching the long arm of personal jurisdiction over national borders." *Asahi*, 480 U.S. at 114. Indeed, " '[g]reat care and reserve should be exercised when extending our notions of personal jurisdiction into the international field.' " *Id.* at 115 (quoting *United States v. First Nat'l City Bank*, 379 U.S. 378, 404 (1965) (Harlan, J., dissenting)). The District Court recognized this factor and concluded that "[t]he legal system of the United Kingdom is different from that of Texas, and the distances and difficulties involved for Dawson mitigate against asserting jurisdiction in Texas." Petition at 13a-14a.

This Court also noted that where the plaintiff is not a resident of the forum state, the forum state's "legitimate interests in the dispute have considerably diminished." *Asahi*, 480 U.S. at 115.

Dawson is a foreign corporation. The Landers are West Virginia residents and their claims concerned an accident that occurred in West Virginia. Foster is a Delaware company principally located in Pennsylvania whose indemnification claim arises from settlement of a suit filed in West Virginia. Texas has no connection with this action and thus no distinct interest in this case.

Foster argues that the District Court erred by not focusing on its indemnification claim. However, focusing solely on Foster's claim presents an even more compelling case that the exercise of jurisdiction over Dawson would offend "traditional notions of fair play and substantial justice." Such an inquiry is appropriate because the Landers, who have received $800,000 from Foster, had their appeal dismissed by the Fifth Circuit. Accordingly, the remaining dispute is simply an indemnification claim asserted by a Delaware company principally located in Pennsylvania against an English company.

A virtually identical situation was presented in *Asahi*, where this Court unanimously concluded that because the dispute only involved an indemnification claim between two non-resident companies, the exercise of jurisdiction would offend "traditional notions of fair play and substantial justice."[1] This Court reasoned that where the plaintiff is not

1. Although only a plurality of this Court embraced the minimum-contacts analysis in *Asahi*, the Court unanimously agreed with the "fair play and substantial justice" analysis.

a resident of the forum state, the forum state's "legitimate interests in the dispute have considerably diminished." *Id.* at 114.

In sum, Dawson is a foreign corporation, and hence would be required to defend itself in a foreign legal system. Foster, a Delaware company principally located in Pennsylvania, has asserted an indemnification claim arising from an accident that occurred in West Virginia. Because the Landers have had their appeal dismissed, Foster's indemnification claim is the only remaining claim. Texas has no connection with this action and thus virtually no distinct interest in this case. Hence, the District Court properly concluded that the exercise of personal jurisdiction would be unfair.

CONCLUSION

For all the foregoing reasons, Dawson respectfully requests that this Honorable Court deny the Petition.

Respectfully submitted,

THEODORE D. ADEN
Counsel of Record
LOUIS SMITH
LEBOEUF, LAMB, GREENE
& MACRAE, L.L.P.
Attorneys for Respondent
One Riverfront Plaza
Newark, New Jersey 07102
(973) 643-8000